

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PHYLLIS PADILLA-OWENS,

Plaintiff,

vs.

Civ. No. 02-448 WJ/WWD

SANDIA NATIONAL LABORATORIES,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendant Sandia Corporation's Motion for Protective Order to Designate Information as "Confidential" So That It Can Be Disclosed [docket no. 15]. The motion is opposed. As drafted, the proposed "Stipulated Confidentiality Order" is neither stipulated nor agreed upon by the parties. The suggested order would require any materials designated as confidential by the producing party to be treated as confidential unless the non-producing party filed a motion with the Court and obtained an order to the effect that the material should not be deemed confidential. Persons, such as experts, to whom disclosure of confidential materials would need to be made would be required to sign a copy of the proposed order and thereby agree to be bound by the terms of the order. Such a practice would extend to persons whose depositions were being taken. Confidential material would retain its confidential character even though it was attached or included with a pleading or transcript which was not designated confidential. The order also would preclude mention of its existence in the presence of

the jury. Any confidential material filed with the Clerk of the Court “shall be kept under seal by the Clerk until further order” of the Court.

Discussion

There is no agreement as to the form of the order, and as presently drafted, the order would not be satisfactory to the Court. For one thing, no proviso which automatically permits filing of materials under seal will be approved. It is likely that there are interests, particularly of third parties, which need to be protected in some way, and that a properly drafted confidentiality order would be the most effective way to permit this without unduly burdening the parties to the litigation. Ordinarily, counsel are able to confer and to agree upon the form of such an order. To best protect the interests of each of the parties, I would recommend to counsel that they confer and agree upon a form of order which would be submitted to the Court on or before November 15, 2002. If no such order is entered, I will direct counsel for each of the parties to submit a proposed form of order and I will enter the Order which seems the more reasonable to me. For the time being, Defendant Sandia Corporation’s Motion for Protective Order to Designate Information as “Confidential” So That It Can Be Disclosed [docket no. 15] will be DENIED WITHOUT PREJUDICE.

This matter shall proceed in accordance with the foregoing.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE